

ORDER NO. 1914

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Robert G. Taub, Vice Chairman; and  
Mark Acton

Competitive Product Prices  
Priority Mail  
Priority Mail Contract 71

Docket No. MC2014-9

Competitive Product Prices  
Priority Mail Contract 71 (MC2014-9)  
Negotiated Service Agreement

Docket No. CP2014-10

ORDER ADDING PRIORITY MAIL CONTRACT 71 TO THE  
COMPETITIVE PRODUCT LIST

(Issued December 19, 2013)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Contract 71 to the competitive product list.<sup>1</sup> For the reasons discussed below, the Commission approves the Request.

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<sup>1</sup> Request of the United States Postal Service to Add Priority Mail Contract 71 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 9, 2013 (Request).

## II. BACKGROUND

On December 9, 2013, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Priority Mail Contract 71 is a competitive product that establishes rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Notice at 1. The Postal Service further asserts that the prices and classification underlying this three-year contract are supported by Governors’ Decision No. 11-6.<sup>2</sup> Among the supporting documents, the Postal Service included a copy of Governors’ Decision No. 11-6, a contract related to the proposed new product, proposed changes to the competitive product list, a statement supporting the Request, and a certification of compliance with 39 U.S.C. § 3633(a). In addition, the Postal Service submitted an application for non-public treatment of materials to maintain redacted portions of Governors’ Decision No. 11-6, the contract, customer-identifying information, and related financial information filed under seal. Request, Attachment F.<sup>3</sup>

On December 11, 2013, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.<sup>4</sup>

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<sup>2</sup> Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

<sup>3</sup> In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7. The Commission has consistently denied similar requests for indefinite protection. See, e.g., Docket Nos. MC2011-1 and CP2011-2, Order No. 563, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

<sup>4</sup> Order No. 1898, Notice and Order Concerning the Addition of Priority Mail Contract 71 to the Competitive Product List, December 11, 2013.

### III. COMMENTS

The Public Representative filed comments on December 17, 2013.<sup>5</sup> No other interested person submitted comments.

In preparing her comments, the Public Representative reviewed the instant contract, the Statement of Supporting Justification, as well as the financial data and the model filed under seal submitted in this docket. PR Comments at 2. The Public Representative concludes that Priority Mail Contract 71 should be categorized as a competitive product and added to the competitive product list. *Id.*

Based on her review of the financial data filed by the Postal Service, the Public Representative states that the negotiated prices in the contract should generate sufficient revenues to cover costs during the first contract year and therefore meet the requirements of 39 U.S.C. § 3633(a). *Id.* at 3. She notes that the contract contains an adjustment provision, which she believes should help maintain the contract's ability to meet the requirements of section 3633(a) over the lifetime of the contract. *Id.* She notes that the Postal Service will file costs, revenues, and volume data in the Annual Compliance Report which will allow the Commission to ensure that the contract continues to comply with 39 U.S.C. § 3633(a). *Id.*

### IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the instant contract, the supporting data filed under seal, and the Public Representative's comments.

*Product list requirements.* The Commission's statutory responsibilities when evaluating the Request include assigning Priority Mail Contract 71 to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34. In addition, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product,

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<sup>5</sup> Public Representative Comments on Postal Service Request to Add Priority Mail Contract 71 to Competitive Product List, December 17, 2013 (PR Comments).

and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. § 3020.32(f), (g), and (h).

The Postal Service asserts that it provides Priority Mail service in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service states that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that the Postal Service is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

The Commission finds that the market for expedited shipping is highly competitive and thus prevents the Postal Service from significantly increasing rates or degrading service without potentially losing volume. This is borne out by the availability of other providers. Further, there is no evidence of an adverse impact on small business concerns. For these reasons, the Commission finds that the instant contract is appropriately classified as a competitive product and added to the competitive product list.

*Cost considerations.* Because Priority Mail Contract 71 is a competitive product, the Postal Service must also show that the contract covers its attributable costs, contributes to the Postal Service's institutional costs, and does not cause any market dominant products to subsidize competitive products. 39 U.S.C. § 3633(a); 39 C.F.R. § 3015.5.

As part of its Request, the Postal Service submitted a certified statement that the contract complies with the requirements of 39 U.S.C. § 3633(a). Request, Attachment E. In addition, the Postal Service filed supporting revenue and cost data showing that the contract is expected to cover its costs. Based on a review of the financial spreadsheet, the rates during the first year of the contract cover attributable costs. The contract contains a price adjustment provision that increases contract rates

in the event during subsequent contract years. *Id.* Attachment B at 3. The adjustment provision increases the likelihood that prices will cover attributable costs during contract years two and three. The Commission will review the contract's cost coverage in the Commission's Annual Compliance Determination to ensure that rates continue to cover costs during subsequent years.

*Other considerations.* By its terms, the contract becomes effective one business day after the date that the Commission issues all necessary regulatory approvals. *Id.* The contract is scheduled to expire three years from the effective date, unless, among other things, either party terminates the contract with 30 days' written notice to the other party or it is renewed by mutual agreement.<sup>6</sup>

The contract also contains a provision that allows the parties to extend the contract for two 90-day periods if a successor agreement is being prepared and the Commission is notified within 7 days of the contract expiring.<sup>7</sup> During the extension periods, prices will increase by the most recent average increase in prices of general applicability, as described in the contract.<sup>8</sup> The Commission finds the two potential 90-day extension periods are reasonable because: (1) prices automatically increase in the extension period, making it likely that the contract will continue to cover its

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<sup>6</sup> *Id.* Should both parties agree to renew the contract, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.

<sup>7</sup> *Id.* at 4. As the Commission noted in Order No. 1773, the Postal Service clarified that identical language in Priority Mail Contract 60 contemplates the Postal Service filing any notices of extension with the Commission *at least one week prior to* the expiration of the contract, as opposed to the instant contract's "within seven (7) days of the contract expiring." See Docket Nos. MC2013-54 and CP2013-70, Order No. 1773, Order Adding Priority Mail Contract 60 to the Competitive Product List, July 8, 2013, at 3; see also Docket Nos. MC2013-54 and CP2013-70, Response of the United States Postal Service to Chairman's Information Request No. 1, July 1, 2013, question 2.

<sup>8</sup> Request, Attachment B at 4. The contract states that prices during any 90-day extension period are subject to the "escalation clause" in Term I.G. of the contract. *Id.* Term I.G. does not include an escalation clause. Presumably, the reference should be to Term I.J. (Annual Adjustment), not Term I.G. Thus, should the Postal Service elect to exercise the 90-day extension provision, the Commission directs the Postal Service to clarify the basis of the price adjustment in any notice of the extension.

attributable costs; and (2) the extension(s) should assist the Postal Service's contract negotiations by providing additional flexibility.

If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.

In conclusion, the Commission approves Priority Mail Contract 71 as a new product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

#### V. ORDERING PARAGRAPHS

*It is ordered:*

1. Priority Mail Contract 71 (MC2014-9 and CP2014-10) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. The revision to the competitive product list appears below the signature of this Order and is effective immediately.
2. If the Postal Service elects to exercise the 90-day extension provision, (see footnote 8, *supra*), the Commission directs the Postal Service to clarify the basis of the price adjustment in any notice of the extension.
3. The Postal Service shall notify the Commission if the instant contract terminates prior to the scheduled expiration date.
4. Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.

5. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Shoshana M. Grove  
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE  
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 C.F.R. part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission's order in Docket Nos. MC2014-9 and CP2014-10. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.



Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Priority Mail Contract 71

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